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Customer Number

Patent
Case No.: 59599US002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: WILLSON, COREY M.

Application No.: 10/802345

Confirmation No.: 3641

Filed: March 17, 2004

Title: GPS INTERFACE FOR LOCATING DEVICE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

Applicants hereby request a Panel Review of the final rejection dated March 15, 2006 in the above-identified application. This Request is being filed concurrently with a Notice of Appeal Pursuant to 37 C.F.R. § 41.31(a). No amendments accompany the Request.

Status of the Claims

Claims 1-18, as amended by Applicants' Amendment and Response filed January 6, 2006, are currently pending in the application. All claims stand rejected in the Examiner's Final Office Action dated March 15, 2006.

Reasons for the Request

Claims 1-18 stand finally rejected under 35 U.S.C. § 103(a) as obvious over the disclosure of U.S. Patent No. 6,259,990 (Shojima et al.). Applicants disagree that the '990 patent teaches or suggests the subject matter of the rejected claims. Applicants believe the Examiner has fundamentally misinterpreted the '990 patent and has failed to adequately consider the amendments and arguments submitted by Applicants in their Amendment and Response of January 6, 2006.

Applicants' claimed invention relates to systems and methods for locating a position marker such as those attached to or associated with underground utilities. In essential and relevant respects, the systems and methods include use of a locating device that is communicatively coupled with a GPS device. The GPS device is capable of indicating and recording GPS coordinate data that *indicates the position of the position marker*. In their January 6, 2006 Amendment and Response, Applicants amended independent claims 1, 9, 11 and 15 to clarify that the GPS device provides GPS coordinates associated with the position of the marker. This feature of the claimed invention not only is wholly absent from the disclosure of the '990 patent, it is fundamentally different from the devices and systems disclosed by the reference.

The Examiner's rejection relies solely on the '990 patent for disclosure or suggestion of all elements of the claimed systems and methods. The '990 patent describes a networked system for directing a pedestrian along a predetermined route. The system is designed ostensibly to supplement or complement traditional GPS-guided car navigation systems by providing guidance and routing capabilities inside buildings and other enclosures where, the reference notes, GPS systems are incapable of use. (*See, e.g.*, col. 5, lines 22-26). The '990 system generally comprises: (1) a central information providing apparatus that receives a pedestrian's current position and intended destination, computes a route and sends the route information back to the pedestrian; (2) a route guidance apparatus carried by a pedestrian user which allows the user to input information into and receive information from the system; and (3) one or more markers installed at building locations that provide directional information to the route guidance apparatus. (*See, e.g.*, col. 3, lines 30-45). The route guidance apparatus may include a GPS receiver for recording a *pedestrian's current position* along a predetermined route. (col. 4, lines 14-15). To aid in route determination where GPS data alone is insufficient (*i.e.*, inside buildings and other enclosures), the guidance apparatus may also include means for receiving directional information from the route markers. (col. 4, lines 13-19; col. 5, lines 18-26).

The GPS receiving capabilities of the route guidance apparatus disclosed in the '990 reference (which the Examiner equates to the locating device of the claimed invention) are fundamentally distinct from the use of GPS data recited in the rejected claims. The systems of the '990 reference do not use GPS data to indicate or record the location of the described stationary directional markers; rather, the '990 reference teaches the use of GPS data to indicate the position of a user of the described route guidance apparatus, irrespective of the position of the stationary directional markers. In contrast, the rejected claims recite systems and methods that use GPS data specifically to indicate and store

information indicating the position of position markers. This is a feature that is simply not disclosed or suggested by the '990 reference. In fact, the very need for the stationary directional markers of the '990 patent stems from an inability to reliably use GPS data near the very places where the markers are installed. (col. 5, lines 18-26). Thus, far from anticipating the present claims, this disclosure actually teaches away from the invention they embody.

The Examiner's response ignores this distinction and argument. The Examiner includes in the explanation of the rejection the following:

"Claims 1-18 recite subject matter that is met by Shojima for the reasons of record as discussed in the previous office action. As well, although Shojima does recite that the GPS is incapable of use inside buildings and installations, Shojima does not limit use of the guidance apparatus (2) to only inside use. Therefore, it would have been obvious that the position of the marker would have still been attainable via GPS, in situations such as when the guidance apparatus (2) would have been at the same position as a marker located outside, such as at the entrance of a building." (Office Action at page 2).

The Examiner's response to Applicants arguments fundamentally misread Applicants' amendment, providing:

"It appears as though applicant's amendments intend to further define that the GPS system for indicating the position of the marker is included in the marker and therefore the locating device receives the position of the marker from the GPS of the marker." (Office Action at page 2-3).

This is simply incorrect. Applicants' claim amendments specifically define that the GPS device (which is communicatively coupled with the locating device) identifies the GPS coordinate data of the marker, not of the device. The Examiner appears to have misread the amendment.

The Examiner's rejection fails to appreciate several fundamental distinctions between the present invention and the devices and methods described by the '990 patent. The GPS receiver of the '990 patent is used to define the location of the guidance apparatus (or, more specifically, the location of a pedestrian carrying the apparatus). The route markers of the '990 reference are used to provide directional information to the apparatus in areas where GPS coordinate data is insufficient or unusable (e.g., inside buildings to indicate a vertical position). Nowhere does the '990 reference teach or suggest systems or methods of locating a position marker by using a locating device and identifying and recording GPS coordinate data related to the position marker.

For at least this reason, Applicants request review and withdrawal of the obviousness rejection of claims 1-18 over the '990 patent.

Summary

Applicants respectfully request that the Panel review and reverse the final rejections of claims 1-18 of the pending application, and that a Panel Decision be issued allowing the application on the existing claims.

Respectfully submitted,

June 15, 2006

Date

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